

FIRST REGULAR SESSION

SENATE BILL NO. 136

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS RUPP AND SMITH.

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0729S.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 135.680, RSMo, and to enact in lieu thereof one new section relating to the new markets tax credit program.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 135.680, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 135.680, to read as follows:

135.680. 1. As used in this section, the following terms shall mean:

2 (1) "Adjusted purchase price", the product of:

3 (a) The amount paid to the issuer of a qualified equity investment for such
4 qualified equity investment; and

5 (b) The following fraction:

6 a. The numerator shall be the dollar amount of qualified low-income
7 community investments held by the issuer in this state as of the credit allowance
8 date during the applicable tax year; and

9 b. The denominator shall be the total dollar amount of qualified
10 low-income community investments held by the issuer in all states as of the credit
11 allowance date during the applicable tax year;

12 c. For purposes of calculating the amount of qualified low-income
13 community investments held by an issuer, an investment shall be considered held
14 by an issuer even if the investment has been sold or repaid; provided that the
15 issuer reinvests an amount equal to the capital returned to or recovered by the
16 issuer from the original investment, exclusive of any profits realized, in another
17 qualified low-income community investment within twelve months of the receipt

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 of such capital. An issuer shall not be required to reinvest capital returned from
19 qualified low-income community investments after the sixth anniversary of the
20 issuance of the qualified equity investment, the proceeds of which were used to
21 make the qualified low-income community investment, and the qualified
22 low-income community investment shall be considered held by the issuer through
23 the seventh anniversary of the qualified equity investment's issuance;

24 (2) "Applicable percentage", zero percent for each of the first two credit
25 allowance dates, seven percent for the third credit allowance date, and eight
26 percent for the next four credit allowance dates;

27 (3) "Credit allowance date", with respect to any qualified equity
28 investment:

29 (a) The date on which such investment is initially made; and

30 (b) Each of the six anniversary dates of such date thereafter;

31 (4) "Long-term debt security", any debt instrument issued by a qualified
32 community development entity, at par value or a premium, with an original
33 maturity date of at least seven years from the date of its issuance, with no
34 acceleration of repayment, amortization, or prepayment features prior to its
35 original maturity date, and with no distribution, payment, or interest features
36 related to the profitability of the qualified community development entity or the
37 performance of the qualified community development entity's investment
38 portfolio. The foregoing shall in no way limit the holder's ability to accelerate
39 payments on the debt instrument in situations where the issuer has defaulted on
40 covenants designed to ensure compliance with this section or Section 45D of the
41 Internal Revenue Code of 1986, as amended;

42 (5) "Qualified active low-income community business", the meaning given
43 such term in Section 45D of the Internal Revenue Code of 1986, as amended;
44 provided that any business that derives or projects to derive fifteen percent or
45 more of its annual revenue from the rental or sale of real estate shall not be
46 considered to be a qualified active low-income community business;

47 (6) "Qualified community development entity", the meaning given such
48 term in Section 45D of the Internal Revenue Code of 1986, as amended; provided
49 that such entity has entered into an allocation agreement with the Community
50 Development Financial Institutions Fund of the U.S. Treasury Department with
51 respect to credits authorized by Section 45D of the Internal Revenue Code of
52 1986, as amended, which includes the state of Missouri within the service area
53 set forth in such allocation agreement;

54 (7) "Qualified equity investment", any equity investment in, or long-term
55 debt security issued by, a qualified community development entity that:

56 (a) Is acquired after September 4, 2007, at its original issuance solely in
57 exchange for cash;

58 (b) Has at least eighty-five percent of its cash purchase price used by the
59 issuer to make qualified low-income community investments; and

60 (c) Is designated by the issuer as a qualified equity investment under this
61 subdivision and is certified by the department of economic development as not
62 exceeding the limitation contained in subsection 2 of this section.

63 This term shall include any qualified equity investment that does not meet the
64 provisions of paragraph (a) of this subdivision if such investment was a qualified
65 equity investment in the hands of a prior holder;

66 (8) "Qualified low-income community investment", any capital or equity
67 investment in, or loan to, any qualified active low-income community
68 business. With respect to any one qualified active low-income community
69 business, the maximum amount of qualified low-income community investments
70 made in such business, on a collective basis with all of its affiliates, that may be
71 used from the calculation of any numerator described in subparagraph a. of
72 paragraph (b) of subdivision (1) of this subsection shall be ten million dollars
73 whether issued to one or several qualified community development entities;

74 (9) "Tax credit", a credit against the tax otherwise due under chapter 143,
75 RSMo, excluding withholding tax imposed in sections 143.191 to 143.265, RSMo,
76 or otherwise due under section 375.916, RSMo, or chapter 147, 148, or 153, RSMo;

77 (10) "Taxpayer", any individual or entity subject to the tax imposed in
78 chapter 143, RSMo, excluding withholding tax imposed in sections 143.191 to
79 143.265, RSMo, or the tax imposed in section 375.916, RSMo, or chapter 147, 148,
80 or 153, RSMo.

81 2. A taxpayer that makes a qualified equity investment earns a vested
82 right to tax credits under this section. On each credit allowance date of such
83 qualified equity investment the taxpayer, or subsequent holder of the qualified
84 equity investment, shall be entitled to a tax credit during the taxable year
85 including such credit allowance date. The tax credit amount shall be equal to the
86 applicable percentage of the adjusted purchase price paid to the issuer of such
87 qualified equity investment. The amount of the tax credit claimed shall not
88 exceed the amount of the taxpayer's state tax liability for the tax year for which
89 the tax credit is claimed. No tax credit claimed under this section shall be

90 refundable or transferable. Tax credits earned by a partnership, limited liability
91 company, S-corporation, or other pass-through entity may be allocated to the
92 partners, members, or shareholders of such entity for their direct use in
93 accordance with the provisions of any agreement among such partners, members,
94 or shareholders. Any amount of tax credit that the taxpayer is prohibited by this
95 section from claiming in a taxable year may be carried forward to any of the
96 taxpayer's five subsequent taxable years. The department of economic
97 development shall limit the monetary amount of qualified equity investments
98 permitted under this section to a level necessary to limit tax credit utilization at
99 no more than [fifteen] **twenty-seven million five hundred thousand** dollars
100 of tax credits in any fiscal year. Such limitation on qualified equity investments
101 shall be based on the anticipated utilization of credits without regard to the
102 potential for taxpayers to carry forward tax credits to later tax years.

103 3. The issuer of the qualified equity investment shall certify to the
104 department of economic development the anticipated dollar amount of such
105 investments to be made in this state during the first twelve-month period
106 following the initial credit allowance date. If on the second credit allowance date,
107 the actual dollar amount of such investments is different than the amount
108 estimated, the department of economic development shall adjust the credits
109 arising on the second allowance date to account for such difference.

110 4. The department of economic development shall recapture the tax credit
111 allowed under this section with respect to such qualified equity investment under
112 this section if:

113 (1) Any amount of the federal tax credit available with respect to a
114 qualified equity investment that is eligible for a tax credit under this section is
115 recaptured under Section 45D of the Internal Revenue Code of 1986, as amended;
116 or

117 (2) The issuer redeems or makes principal repayment with respect to a
118 qualified equity investment prior to the seventh anniversary of the issuance of
119 such qualified equity investment.

120 Any tax credit that is subject to recapture shall be recaptured from the taxpayer
121 that claimed the tax credit on a return.

122 5. The department of economic development shall promulgate rules to
123 implement the provisions of this section, including recapture provisions on a
124 scaled proportional basis, and to administer the allocation of tax credits issued
125 for qualified equity investments, which shall be conducted on a first-come,

126 first-serve basis. Any rule or portion of a rule, as that term is defined in section
127 536.010, RSMo, that is created under the authority delegated in this section shall
128 become effective only if it complies with and is subject to all of the provisions of
129 chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and
130 chapter 536, RSMo, are nonseverable and if any of the powers vested with the
131 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective
132 date, or to disapprove and annul a rule are subsequently held unconstitutional,
133 then the grant of rulemaking authority and any rule proposed or adopted after
134 September 4, 2007, shall be invalid and void.

135 6. For fiscal years following fiscal year ~~[2010]~~ **2012**, qualified equity
136 investments shall not be made under this section unless reauthorization is made
137 pursuant to this subsection. For all fiscal years following fiscal year ~~[2010]~~ **2012**,
138 unless the general assembly adopts a concurrent resolution granting authority to
139 the department of economic development to approve qualified equity investments
140 for the Missouri new markets development program and clearly describing the
141 amount of tax credits available for the next fiscal year, or otherwise complies with
142 the provisions of this subsection, no qualified equity investments may be
143 permitted to be made under this section. The amount of available tax credits
144 contained in such a resolution shall not exceed the limitation provided under
145 subsection 2 of this section. In any year in which the provisions of this section
146 shall sunset pursuant to subsection 7 of this section, reauthorization shall be
147 made by general law and not by concurrent resolution. Nothing in this subsection
148 shall preclude a taxpayer who makes a qualified equity investment prior to the
149 expiration of authority to make qualified equity investments from claiming tax
150 credits relating to such qualified equity investment for each applicable credit
151 allowance date.

152 7. Under section 23.253, RSMo, of the Missouri sunset act:

153 (1) The provisions of the new program authorized under this section shall
154 automatically sunset six years after September 4, 2007, unless reauthorized by
155 an act of the general assembly; and

156 (2) If such program is reauthorized, the program authorized under this
157 section shall automatically sunset twelve years after the effective date of the
158 reauthorization of this section; and

159 (3) This section shall terminate on September first of the calendar year
160 immediately following the calendar year in which the program authorized under
161 this section is sunset.

162 However, nothing in this subsection shall preclude a taxpayer who makes a
163 qualified equity investment prior to sunset of this section under the provisions
164 of section 23.253, RSMo, from claiming tax credits relating to such qualified
165 equity investment for each credit allowance date.

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